

BAER, S.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SETTLEMENT FUNDING, LLC,

Plaintiff -

Counterclaim Defendant,

-against-

AXA EQUITABLE LIFE INSURANCE CO.,

Defendant -

Counterclaim Plaintiff -

Third-Party Plaintiff,

-against-

LIFE SETTLEMENT CORPORATION,

Counterclaim Defendant,

-and-

ALAN RUBENSTEIN,

Third-Party Defendant.

-----X

09 **CIVIL** 8685 (HB)

**JUDGMENT**

#1 10/19/10

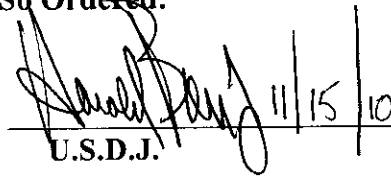
USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>11-15-11</u>
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A Jury Trial before the Honorable Harold Baer Jr., United States District Judge, having begun on October 18, 2010, and at the conclusion of the trial, on October 25, 2010, the jury having rendered a verdict in favor of Settlement Funding, LLC in the amount of \$5,000,000.00 as against AXA Equitable Life Insurance Co., and in favor of AXA Equitable Life Insurance Co. as against the Trustee of the Adler Trust in the amount of \$1.00, it is,

**ORDERED, ADJUDGED AND DECREED:** That Settlement Funding, LLC have judgment in the amount of \$5,000,000.00 as against AXA Equitable Life Insurance Co., and AXA Equitable Life Insurance Co. have judgment as against the Trustee of the Adler Trust in the amount of \$1.00.

**DATED:** New York, New York  
November \_\_, 2010


**So Ordered:**

  
U.S.D.J.

**RUBY J. KRAJICK**

**Clerk of Court**

**BY:**

  
**Deputy Clerk**

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON \_\_\_\_\_

SOUTHERN DISTRICT OF NEW YORK

Settlement Funding LLC

AXA Equitable Life Ins Co

Alan Rubenstein as Trustee  
of Esther Adler Family Trust

09cv 8685 (HB)  
CASE NUMBER

JUDGE HAROLD BAER, JR.

(FULL TITLE OF CASE- IF NECESSARY USE OTHER SIDE)

APPEARANCES: (include firm name and telephone #)

FOR PLAINTIFF: Greenburg Traquay LLP - 200 Park Ave NYC 10166  
Jesus Caza - 212-801-9200

FOR DEFENDANT: Danka Biddle + Reath - One Logan Square - 18th &  
Cherry Street, Phil. PA. <sup>9103</sup> Stephen Boken 215-988-2769 (over)

TYPE OF TRIAL: [☒] JURY or [☐] NON-JURY BEGUN ON: 10-18-10  
continued on 10/19/10, 10/20/10, 10/21/10, 10/22/10  
and concluded on 10/25/10

Verdict for Plff - See Verdict Sheet Attached

(AN EXTRACT OF THE MINUTES)

CLERK Dennis Swain

COURT REPORTER Terry Harrison

(IF NECESSARY USE OTHER SIDE)

*Clk Ekh 12*  
*2135 PM*  
*10-25-10*  
*N*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**SETTLEMENT FUNDING, LLC**

**Plaintiff - Counterclaim Defendant,**

**- against -**

**AXA EQUITABLE LIFE INSURANCE CO.**

**Defendant - Counterclaim Plaintiff –  
Third-Party Plaintiff,**

**- against -**

**LIFE SETTLEMENT CORPORATION**

**Counterclaim Defendant,**

**- and -**

**ALAN RUBENSTEIN**

**Third-Party Defendant.**  
-----X

**09 CV 8685 (HB)**

**VERDICT SHEET**

**A. CONTESTABILITY**

1. Is AXA Equitable barred from contesting the validity of the Policy because Mrs. Adler died beyond the contestability period?

Yes ✓ No       

**If your answer to number 1 is "Yes," proceed to question 5 and do not answer questions 2-4. If your answer is "No," proceed to question 2.**

**B. THE POLICY**

2. Was the Trust created as part of a scheme to defraud AXA Equitable into issuing the Policy?

Yes        No       

3. Do you find by clear and convincing evidence that the signature of Esther Adler on the Trust Agreement was (a) signed by someone without Esther Adler's authorization; and (b) with fraudulent intent?

Yes        No       

4. Has Settlement Funding, LLC proven, by a preponderance of the evidence, that the Policy was supported by a proper insurable interest at the time it was issued?

YES        NO

**C. NEGLIGENT MISREPRESENTATION AS AGAINST AXA EQUITABLE**

5. Do you find by a preponderance of the evidence that AXA Equitable negligently made misrepresentations that were reasonable for Life Settlement Corporation to rely on, that were relied upon by Life Settlement Corporation?

Yes ☒ No ☐

6. If you answer "Yes," did Settlement Funding or Life Settlement Corporation suffer any damages as a result of AXA's negligent misrepresentations?

Yes ☒ No ☐

7. If you answer "Yes," state the amount of the damages, if any, suffered by Life Settlement Corporation as a result of AXA's negligent misrepresentations. If you find that nominal damages are appropriate, enter up to \$1.00.

Damages: \$ \$5 million

**D. NEGLIGENT MISREPRESENTATION AND FRAUD AS AGAINST THE TRUSTEE OF THE ADLER TRUST**

8. Did the Trustee of the Adler Trust make false statements in the application for the Policy?

YES ☒ NO ☐

**If you answer "No" skip directly to question 14.**

9. Did the Trustee of the Adler Trust know, or should he have known, that one or more of these statements were false at the time they were made?

YES ☒ NO ☐

**If you answer "No" skip directly to question 14.**

10. Were one or more of the misrepresentations material to AXA Equitable's decision to issue the Policy such that, had AXA Equitable known the truth behind any of these misrepresentations, AXA Equitable would not have issued the Policy?

YES ☒ NO ☐

**If you answer "No" skip directly to question 14.**

11. Do you find that AXA Equitable reasonably relied on said representations?

YES ☐ NO ☒

**If you answer "No" skip directly to question 14.**

12. Did AXA Equitable suffer any damages as a result of the Trustee's misrepresentations?

Yes ☐ No ☐

**If you answer "No" skip directly to question 14.**

13. If you answered "Yes" to Question 12, state the amount of the damages, if any. If you find that nominal damages are appropriate, enter up to \$1.00.

Damages: \$ \_\_\_\_\_

**E. CONSPIRACY TO COMMIT FRAUD AS AGAINST THE TRUSTEE OF THE ADLER TRUST**

**Answer the Questions in this Section E only if you found, in Section F, that the Trustee made statements to AXA Equitable that the Trustee either knew were false, or should have known were false, at the time they were made.**

Loosely defined, a conspiracy is an agreement by two or more persons to commit an unlawful act.

14. Were any of the false statements by the Trustee made in concert with one or more other persons?

YES ☒ \_\_\_\_\_ NO \_\_\_\_\_

15. If your answer is "Yes," do you find that the Trustee made said false statements intentionally and in furtherance of the conspiracy between the Trustee and one or more other persons?

YES ☒ \_\_\_\_\_ NO \_\_\_\_\_

16. If your answers to Questions 14 and 15 are "Yes," please set forth the amount, if any, of damages you find AXA Equitable is entitled to from the Trustee. If you find that nominal damages are appropriate, enter up to \$1.00.

Damages: \$ 1.00.



**F. OHIO VIATICAL SETTLEMENTS ACT**

17. Do you find that the Policy affect the rights of a resident of Ohio or that it had a reasonable relation to Ohio?

YES \_\_\_\_\_

NO ☒ \_\_\_\_\_

**If your answer is "No" you may skip the questions in Sections F and G and proceed to Section H. If your answer is "Yes" please continue.**

18. Was the Policy sold to Life Settlement Corporation pursuant to a written agreement within five (5) years of the date it was issued?

YES \_\_\_\_\_

NO \_\_\_\_\_

19. If your answer is "Yes," did AXA Equitable suffer damages as a result?

YES \_\_\_\_\_

NO \_\_\_\_\_

20. If your answer is "Yes," please set forth the amount of damages, if any, you find AXA Equitable is entitled to from Life Settlement Corporation and/or The Trustee. If you find that nominal damages are appropriate, enter up to \$1.00.

a) Life Settlement Corporation \$ \_\_\_\_\_

b) The Trustee \$ \_\_\_\_\_

21. Was the Policy obtained by providing false information to AXA Equitable?

YES \_\_\_\_\_

NO \_\_\_\_\_

22. If your answer is "Yes," did the Trustee know, or was he reckless in not knowing, at the time the Policy was sold to Life Settlement Corporation that the Policy had been obtained by providing false information to AXA Equitable?

YES \_\_\_\_\_ NO \_\_\_\_\_

23. If your answer to is "Yes," did Life Settlement Corporation know, or was it reckless in not knowing, when it purchased the Policy on February 27, 2009, that the Policy had been obtained by providing false information to AXA Equitable?

YES \_\_\_\_\_ NO \_\_\_\_\_

24. If your answer to Questions 22 or 23 is "Yes," did AXA Equitable suffer damages as a result of the sale of the Policy?

YES \_\_\_\_\_ NO \_\_\_\_\_

25. If your answer to Question 24 is "yes," what is the amount of damages, if any, you find AXA Equitable is entitled to from Life Settlement Corporation and/or The Trustee. If you find that nominal damages are appropriate, enter up to \$1.00.

a) Life Settlement Corporation \$ \_\_\_\_\_

b) The Trustee \$ \_\_\_\_\_

**G. CONSPIRACY TO VIOLATE OHIO'S VIATICAL SETTLEMENTS ACT AS AGAINST THE TRUSTEE OF THE ADLER TRUST**

**Answer the Questions in this Section G only if you found, in Section F, that the Trustee violated the Ohio Viatical Settlements Act.**

26. Did the Trustee of the Adler Trust violate the Ohio Viatical Settlements Act in furtherance of a conspiracy between the Trustee and one or more other persons?

YES \_\_\_\_\_ NO \_\_\_\_\_

27. If your answer is "Yes," did AXA Equitable suffer damages as a result?

YES \_\_\_\_\_ NO \_\_\_\_\_

28. If your answer is "Yes," please set forth the amount of damages, if any, you find AXA Equitable is entitled to from the Trustee. If you find that nominal damages are appropriate, enter up to \$1.00.

Damages: \$ \_\_\_\_\_.

#### H. UNCLEAN HANDS AND ESTOPPEL

29. Did Life Settlement Corporation have unclean hands, *i.e.* did it commit a wrong, in connection with its conduct in the purchase, sale, or repurchase of the Policy?

YES \_\_\_\_\_ NO ☒ \_\_\_\_\_

30. Did Life Settlement Corporation have unclean hands, *i.e.* did it commit a wrong, in connection with its conduct in the assignment of the Policy to Settlement Funding, LLC?

YES \_\_\_\_\_ NO ☒ \_\_\_\_\_

**If you answered "YES" to Questions 29 and 30, then do not answer the remaining Questions in this Section I. If you answered "NO" to each of the above Questions 29 and 30, then go on to Question 31.**

31. Did AXA Equitable have a duty to supply Life Settlement Corporation with correct information in connection with Life Settlement Corporation's decision to purchase the Policy?

YES ☒ NO ☐

32. If your answer is "Yes," was the misrepresentation material to Life Settlement Corporation's decision to purchase the Policy such that, had Life Settlement Corporation known the truth, it would not have purchased the Policy?

YES ☒ NO ☐

33. If your answer is "Yes," did AXA Equitable intend to induce Life Settlement Corporation to rely upon the misrepresentation and was Life Settlement Corporation reasonable in doing so?

YES ☒ NO ☐

34. If your answer is "Yes," did Life Settlement Corporation change its position, to its detriment, because of the misrepresentation?

YES ☒ NO ☐

35. If your answer is "Yes," did Life Settlement Corporation suffer damages because of the misrepresentation?

YES ☒ NO ☐

36. If your answer is "Yes," please set forth the amount of damages, if any, you find Life Settlement Corporation is entitled to from AXA Equitable. If you find that nominal damages are appropriate, enter up to \$1.00.

Damages: \$                      N/A

37. Do you believe that punitive damages are appropriate in this case?

YES \_\_\_\_\_

NO ✓

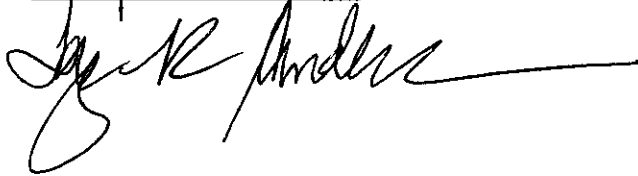
**When you have completed your answers, signal the Marshal that you are ready to report your verdict to the Court.**

**Date:**

6/25/2010

**Foreperson:**

Tonya R Anderson

A handwritten signature in black ink, appearing to read "Tonya R. Anderson", written over a horizontal line.